

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

RICHARD ENRIQUE ULLOA,

Petitioner,

-v.-

**9:11-CV-0787
(MAD)**

SHERIFF JACK MAHAR,

Respondent.

APPEARANCES:

OF COUNSEL:

RICHARD ENRIQUE ULLOA

17902-052

Metropolitan Detention Center

Inmate Mail/Parcels

P.O. Box 329002

Brooklyn, New York 11232

Petitioner *pro se*

Mae A. D'Agostino, U.S. District Judge:

DECISION and ORDER

The Clerk of the Court has sent to the Court for review an affidavit filed by petitioner *pro se* Richard Enrique Ulloa. *See* Dkt. No. 5 ("Affidavit"). Petitioner filed this Affidavit in response to this Court's July 14, 2011 Decision and Order. *See* Dkt. No. 3.

In the July 14, 2011 Decision and Order, the Court noted that petitioner's pleading in this action – although completed by petitioner on a form application for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 – plainly challenges the validity of his convictions in *United States of America v. Ulloa*, 1:10-CR-321 ("10-CR-321"), a criminal proceeding previously tried before a jury in this District in a matter over which United States District Judge Thomas J. McAvoy presided. *See* Dkt. No. 1, Grounds One through Twenty-Two. As such, in

its July 14, 2011 Decision and Order, the Court noted that this action was properly viewed as one brought pursuant to 28 U.S.C. § 2255. *See* Dkt. No. 3 at 2-3 (citations omitted). Accordingly, the Court notified petitioner that, unless he consented to the withdrawal of this action as having been improperly brought pursuant to 28 U.S.C. § 2241, the Court would convert this action to a proceeding brought by petitioner pursuant to 28 U.S.C. § 2255. *See id.* at 4.

In his affidavit, petitioner notes that he "concurs with [the Court's] assessment of [this action being a] 28 USC 2255 [motion]." *See* Dkt. No. 5 at 1.

In light of this Court's previous observations regarding the relief that petitioner seeks in his petition, together with the Affidavit he filed in response to the July 14, 2011 Decision and Order, the Court directs the Clerk of the Court to convert this action to a proceeding brought pursuant to 28 U.S.C. § 2255, and reassign this matter to United States District Judge Thomas J. McAvoy, who presided over the jury trial in *United States of America v. Ulloa*, 1:10-CR-321. This Court makes no ruling as to the requests that petitioner makes in his Affidavit that are unrelated to the manner in which this petition shall be viewed by the Court, nor the propriety of the petition currently filed in this action, thereby leaving those determinations to Judge McAvoy.

Accordingly, the Court hereby

ORDERS that the Clerk of the Court shall convert this action to a proceeding brought pursuant to 28 U.S.C. § 2255. The Clerk of the Court shall also file each item filed in the present action in the docket of the criminal matter referenced above; and the Court further

ORDERS that the Clerk of the Court shall reassign this matter to United States District Judge Thomas J. McAvoy, who presided over the jury trial in *United States of America v. Ulloa*, 1:10-CR-321; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Decision and Order on petitioner by regular mail.

IT IS SO ORDERED.

Dated: August 19, 2011
Albany, New York



Mae A. D'Agostino
U.S. District Judge